IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 23 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALOL NAGRIK SAHAKARI BANK LTD - Appellant(s)
Versus
BABUBHAI ATMARAM PATEL THRO, POAH MR.BHAKTIBHAI & 1 - Defendant(s)

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Appearance :

MR VC DESAI for Appellant(s) : 1,
NONE FOR for Defendant(s) : 1,
MR LR PUJARI AGP for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/01/2007

ORAL JUDGMENT

1. Heard Mr.V.C. Desai, learned counsel for the appellant and Mr.L.R. Pujari, learned Assistant Government Pleader

for the Registrar, Cooperative Societies – respondent No.2. None for the original plaintiff – respondent No.1 herein.

2. The appeal has been admitted for hearing the parties on the following substantial questions of law on 2/2/1994;

(i) Having regard to the provisions of Order 7 Rule 11(d), since original plaintiff is at America much prior to the date of filing present suit and present suit for relief of reinstatement in service etc. has been filed by Power of Attorney Holder, whether same is barred by Section : 14(a) and 34 of Specific Relief Act?

(ii) Having regard to the object of Section 167 of the Gujarat Co-operative Societies Act, 1961 to see that the Society is not unnecessarily be dragged to a Court of law and having regard to the uncontroverted fact that no such no Notice has been served on Appellant before instituting the present suit, whether Lower Appellate Court has erred in totally ignoring this fact and in not rejecting plaint under Order 7 Rule 11(d) of Civil Procedure Code?

(iii) Having regard to the fact that before institution of present suit no Notice as contemplated under Section 80 of Civil Procedure Code has been served on either State Government or Resp.No.2 and having regard to the fact that no permission was

sought for in this regard, whether Lower Appellate Court has committed an error of Law in not dismissing the suit against the respondent No.2?

3. During the course of arguments, Mr.Desai, learned counsel for the appellant raised some more questions. He submits that the following, now argued by him, is a substantial question of law and deserves consideration by this Court.
4. After hearing the parties, I framed the following additional substantial question of law;

"Whether on the facts and in the circumstances of the case, the learned courts below were justified in holding that the suit is within limitation, specially when both the courts have held that the Civil Judge, Junior Division had no jurisdiction to entertain and decide the suit?

5. Short facts necessary for disposal of the appeal are that the respondent No.1 Babubhai Atmaram Patel, who was working as Branch Manager with the appellant – Kalol Nagrik Sahakari Bank Limited, was removed from services. After issuing necessary notice to the appellant

Bank, he filed the Civil Suit seeking relief that the order of his termination was illegal and he was entitled to reinstatement with back wages. The present appellant Bank appeared before the Court and filed an application under Order VII Rule 11 of the Code of Civil Procedure and submitted that in view of sec.32 of the Bombay Civil Courts Act, which provides that in a matter of Cooperative Society, a Civil Judge, Junior Division would have no jurisdiction, the suit could not be tried by the learned Civil Judge, Junior Division. As the suit was against the Government or its representative, they filed yet another application submitting inter-alia that the suit was barred by limitation. The Registrar, Cooperative Societies, filed an application that in absence of a notice under sec.167 of the Gujarat Cooperative Societies Act, 1961 (Act No.10 of 1962), the suit could not proceed against him. After hearing the parties on the said application, learned trial court held that it had no jurisdiction to decide the matter, but it rejected the other application. Being aggrieved by the said order of returning the plaint, the appellant Bank preferred a First Appeal and the appeal came to be dismissed by the learned appellate court holding that the suit was within limitation, but the trial court had no

jurisdiction to hear and decide the matter. Being aggrieved by said judgment and decree, the Bank is before this Court with a submission that once the court observes that it had no jurisdiction to entertain, hear and decide a suit, then it simply has to dismiss the suit or return the plaint for proper representation, but the Court which has no jurisdiction, cannot decide any other question, whether legal or factually.

6. Order VII Rule 11 of the Code of Civil Procedure is a provision which authorises the Court to reject the plaint at any stage of the suit. Order VII Rule 10 provides for return of the plaint for its representation in the court in which the suit should have been instituted. The moment a court comes to the conclusion that it has no jurisdiction to hear and decide the matter, then, it has to stay its hands. It is trite to say that a Court which has no jurisdiction, cannot decide any question raised by the parties whether on the legal side or on the factual side. In the present matter, two courts had held that the learned Civil Judge, Junior Division had no jurisdiction to hear and decide the matter, but at the same time, the said courts made certain observations on merits and decided certain issues. A court which has no jurisdiction to hear and

decide the matter, would not be entitled to decide any issue either in favour of or against the interest of either party. So far as the orders passed by the courts relating to return of the plaint are concerned, are maintained, but all other observations and decisions on other issues and applications, are hereby set aside. The additional question framed, is answered in favour of the appellants. The judgment and decree passed by the appellate court are set aside and that of the learned trial court is modified to the extent that the plaint shall be returned to the plaintiff for its proper presentation, but any finding recorded by the learned trial court on the merits of the matter, shall not bind the parties. After the plaint is filed before the competent court, the parties would be entitled to raise objections as are available to them.

7. The appeal is allowed to the extent indicated above. No costs. Let a decree be framed accordingly.

(R.S. GARG, J.)

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